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9 UNITED STATES DISTRICT COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

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13 UNITED STATES OF AMERICA,) Case No. 08cr1436-LAB
14)
14 Plaintiff,) **STATEMENT OF FACTS**
15) AND
15 v.) **POINTS AND AUTHORITIES**
16)
16 DOMINICK SMITH,) Date: 6/16/08
17) Time: 2:00 p.m.
17 Defendant.) Court: JUDGE BURNS
18)
19

20 **STATEMENT OF FACTS**

21 An Indictment filed in this matter alleges that on April 6,
22 2008 the defendant transported illegal aliens and aided and
23 abetted others.

24 Discovery received to date indicates that on April 6, 2008,
25 defendant SMITH and other persons met at the Viejas Casino after
26 which they traveled east on Interstate Highway 8. The discovery
27 indicates that a vehicle driven by defendant SMITH, picked up
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aliens and transported them some distance before the Border Patrol attempted to stop the vehicle. Discovery indicates that the vehicle failed to yield to the Border Patrol vehicle and eventually came to a stop on Interstate highway 8, traveling westbound in the eastbound lanes. All persons in the vehicle were reportedly arrested.

POINTS AND AUTHORITIES

1. **STATEMENT OF DEFENDANT.** Pursuant to Federal Rule of Criminal Procedure 16(a)(1)(A) and (B), *Brady v. Maryland*, 373 U.S. 383 (1963) and the Fifth and Sixth Amendments to the United States Constitution, defendant requests disclosure of any statements, whether oral, written, or recorded made by him which are in the possession, custody, or control of the government, or which by the exercise of due diligence may become known to the government, regardless of to whom made. A defendant has the right to inspect any copy written or recorded statements made by him to government agents or within the custody or control of the government. This rule has been extended to permit discovery or a written summary of the defendant's oral statement contained the handwritten notes of the government agent. *United States v. Johnson*, 525 F.2d 999 (2nd Cir. 1975); *United States v. Pilnick*, 267 F. Supp. 791 (S.D.N.Y. 1976; *Loux v. United States*, 389 F.2d 911 (9th Cir. 1968).

1 2. **DEFENDANT'S CRIMINAL RECORD.** Pursuant to *Federal Rule*
2 *of Criminal Procedure 16(a)(1)(D)*, defendant requests disclosure
3 of his criminal record.
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5 3. **DOCUMENTS, TANGIBLE OBJECT, REPORTS.** Pursuant to
6 *Federal Rule of Criminal Procedure 16(a)(1)(E)* defendant
7 requests the opportunity to inspect and copy or photograph all
8 books, papers, documents, data, photographs, and tangible
9 objects buildings or places which are enumerated in subsections
10 (i), (ii) and (iii).
11

12 Defendant requests the opportunity to inspect and
13 copy/photograph the following:

14 a. the originals of the photographs supplied in
15 discovery, specifically pages 0042, 0043, 0044, 0045, 0046,
16 0047, 0048, 0049, 0050, and 0051;
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18 b. all items found in a green 1997 Dodge Ram 2500,
19 VIN 3B7KC23W1VM540876, California license number 5M48195;

20 c. all items found in a blue FORD Escort, VIN
21 1FAFP13P8WW309280, California License 5YJJ275;

22 d. all records relating to an alleged encounter with
23 the 1997 Dodge Ram 2500 referred to in subparagraph a. above
24 that occurred on any date prior to April 6, 2008;

25 e. all records obtained relative to use of the
26 following telephones:
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1) Black Motorola i205, identification number
2 36YEA4TX0;

3) Black Cricket UTstarcom, identification
4 number 7440317614;

5) Black Motorola Boost i455, identification
6 number 364V6N8GHK;

7) Black Motorola L7c, identification number
8 02015249412.

9 f. all video and/or photographs of defendant and/or
10 the Dodge Ram 2500 vehicle obtained from any source.

11 4. **REPORTS OF EXAMINATIONS AND TESTS.** Defendant also
12 requests any and all results and reports of scientific tests or
13 experiments conducted by the government pursuant to *Federal Rule*
14 *of Criminal Procedure 16(a)(1)(F)*.

15 5. **EXPERT WITNESSES.** Pursuant to *Federal Rule of*
16 *Criminal Procedure 16(a)(1)(G)* defendant requests disclosure of
17 a written summary of testimony the government intends to use
18 under *Federal Rules of Evidence 702, 703, or 705*.

19 6. **NOTICE OF GOVERNMENT'S INTENT TO USE EVIDENCE.**
20 *Federal Rule of Criminal Procedure 12(b)(4) (B)* provides in
21 pertinent part:

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23 "At the arraignment or as soon thereafter
24 as practicable the defendant may, in order
25 to have an opportunity to move to suppress

1 under Rule 12 (b)(3)(C), request
2 notice of the government's intention to use
3 (in its evidence-in-chief at trial) any evidence
4 which the defendant may be entitled to discover
under Rule 16."

5 The purpose of this rule is to avoid needless motions
6 by the defense to suppress evidence that is not going to be used
7 at trial. The Rule places a burden on the government to review
8 its case and let the defendant know what evidence the government
9 is going to use. In this way, the Rule seeks to "eliminate from
10 the trial disputes over police conduct not immediately relevant
11 to the question of guilt." *Jones v. United States*, 362 U.S.
12 257, 264 (1960).

13 **7. RULE 404(b) EVIDENCE.** Defendant requests the
14 government be ordered to provide discovery and reasonable notice
15 of evidence of other crimes, wrongs, or acts of the defendant
16 that the government contends may be proof of motive,
17 opportunity, intent, preparation, plan, knowledge, identity, or
18 absence of mistake or accident. Defendant must have access to
19 such evidence in order to be able to make a timely motion to
20 exclude it at trial and for the purposes of the "balancing"
21 required by Rule 403. See *United States v. Cook*, 609 F.2d 1174
22 (9th Cir. 1985).

23 **8. RULE 609 EVIDENCE.** Defendant requests that the
24 government produce all evidence of prior convictions of the
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1 defendant that the government intends to introduce at trial, for
2 impeachment purposes, in the event the defendant testifies.
3 Pretrial production of such convictions is necessary in order
4 that the defendant may determine whether such convictions are
5 admissible under *Rules 403 and 609*. The defendant further
6 requests that the government supply the defendant with the
7 notice required by *Rule 609(b)* relative to convictions in excess
8 of 10 years old which the government intends to use for
9 impeachment at trial.

10. **PRESERVATION OF AGENTS' ROUGH NOTES.** Defendant
11 requests an order that the rough notes of agents be ordered
12 preserved at this time so that appropriate motions may be
13 brought in the future of their production. *United States v.*
14 *Harris*, 543 F.2d 1247 (9th Cir. 1976).

15. **TIMETABLE FOR DISCLOSURE OF JENCKS MATERIAL.**
16 Defendant requests that the court establish a timetable for
17 disclosure of *Jencks* material pre-trial to avoid unnecessary
18 delay during the trial for investigation and in order that
19 counsel may prepare for cross-examination.

20. **CO-DEFENDANT'S STATEMENTS.** Defendant requests
21 disclosure of statements of co-defendants as such statements may
22 exculpate the defendant and should therefore be disclosed under
23 *Brady*, *infra*. In addition, disclosure is necessary so that
24 defendant can examine said statements to determine, pursuant to

1 *Bruton v. United States*, 391 U.S. 123 (1968), whether the
2 statements implicate the defendant and should be redacted or
3 whether severance should be sought.

4 **12. GOVERNMENT AGREEMENTS WITH WITNESSES.** Defendant
5 requests disclosure of all agreements between the government and
6 prosecution witnesses which may tend to show bias or motive not
7 to tell the truth.

8 **13. BRADY AND GIGLIO MATERIAL.** Pursuant to *Brady v.*
9 *Maryland*, 373 U.S. 383 (1963), *United States v. Agurs*, 42 U.S.
10 97 (1976), and *Giglio v. United States*, 405 U.S. 150 (1972),
11 defendant requests that the court order the government to
12 disclose all evidence in its possession favorable to him on the
13 issue of guilt, or evidence which tends to effect the
14 credibility of the prosecution's case

15 **14. GOVERNMENT REVIEW OF LAW ENFORCEMENT PERSONNEL FILES.**
16 The defendant requests that the government examine the personnel
17 files and any other files within its custody, care or control,
18 or which could be obtained by the government, for all testifying
19 witnesses, including testifying officers and agents who may have
20 been controlling or contacting any confidential informant who
21 may be involved in this case. The defendant requests that these
22 files be reviewed by the government attorney for evidence of
23 perjurious conduct or other like dishonesty, or any other
24 material relevant to impeachment, or any information that is
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1 exculpatory, pursuant to its duty under *U.S. v. Henthorn*, 931
2 F.2d 29 (9th Cir. 1991). See *U.S. v. Jennings*, 960 F.2d 1488,
3 1492 (9th Cir. 1992).

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5 Dated: May 24, 2008
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Respectfully submitted,

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